

## STANDARD TERMS AND CONDITIONS OF PROCUREMENT

### 1. PURPOSE OF THE TERMS AND CONDITIONS

- 1.1. The purpose of this document is to establish the general procurement terms and conditions which govern the provision of the services and/or provision of goods (“**Services**”) by the Service Provider to Vergenoeg Mining Company (Pty) Ltd (“**VMC**”), as detailed in the purchase order placed by VMC to the Service Provider for the Services (“**PO**”).

### 2. SCOPE OF APPLICATION

- 2.1. These Standard Terms and Conditions shall apply to all POs submitted by VMC to the Service Provider. Any amendment to, or deviation from, these Standard Terms and Conditions by the Service Provider shall only be valid if it has been accepted in writing by VMC.
- 2.2. No other condition, specification, or similar instrument that the Service Provider includes in any documentation exchanged between the Parties regarding the PO and contradictory to the provisions of these Standard Terms and Conditions shall be applicable.
- 2.3. If there is a contract in place between VMC and the Service Provider in respect of certain goods and/or services, the provisions of the contract shall prevail over these Standard Terms and Conditions in respect of the supply by the Service Provider of such goods and/or services which are the subject of the Contract. The terms and conditions set out in the contract including any price(s) payable shall apply only in respect of the goods and/or services under such Contract.
- 2.4. If the Service Provider accepts a PO whether by means of delivery in terms of the PO or by any other means, the Service Provider shall be deemed to have accepted the PO as well as these Standard Terms and Conditions.
- 2.5. In the event of a conflict between these Standard Terms and Conditions and the details contained in a PO, the provisions of these Standard Terms and Conditions shall prevail unless, because of concerns being raised by the Service Provider in terms of condition 2.7, the PO is accompanied by a written document signed by an authorised representative of VMC amending these Standard Terms and Conditions.

### 3. PURCHASE ORDERS

- 3.1. Purchase Orders from VMC may include, *inter alia*, the following:
  - 3.1.1. the description of the goods and/or Services required;
  - 3.1.2. the price payable for such goods and/or Services with details of any agreed adjustments, variations or discounts (including any Penalty);

- 3.1.3. the mode of delivery or collection;
- 3.1.4. the details of who is responsible for transporting of the goods to any one or more of VMC's premises, depending on the context ("**Delivery Point/s**");
- 3.1.5. the drawings, dimensions or qualities, as detailed in the PO or communicated by VMC to the Service Provider by any other means ("**Specifications**") required, if variable;
- 3.1.6. the required quantity of the goods and/or Services;
- 3.1.7. the date for delivery or collection including the specified date for delivery of goods or completion of Services as detailed in the PO(s) ("**Key Date**") (if applicable);
- 3.1.8. the Delivery Point/s (if the Service Provider is to deliver to VMC); and
- 3.1.9. any reference to these Standard Terms and Conditions.
- 3.2. The placing of POs with Service Providers shall be in VMC's sole discretion and/or subject to VMC's operational requirements. VMC reserves the right to withdraw the PO at any time prior to completion of delivery in respect thereof for any reason. Such withdrawal shall be by means of written notification to the Service Provider and without incurring any liability to the Service Provider for damages or otherwise as a result of such withdrawal.
- 3.3. If there is a withdrawal of a PO by VMC, it shall be deemed that no agreement has been effected. There shall be no obligation on VMC to accept delivery after the date of the notice of withdrawal and/or to make payment in respect of delivery tender after such date.
- 3.4. A PO sent to any of the addresses contained in the Service Provider's vendor application shall be deemed to have been received by the Service Provider as follows:
  - 3.4.1. if sent by email to an email address, on the date of sending provided that VMC receives on the same day a read receipt from the Service Provider;
  - 3.4.2. if sent by facsimile to a facsimile number, on the date of sending provided receipt thereof is confirmed telephonically by VMC;
  - 3.4.3. if sent by prepaid registered post to a postal address, on the 7th (seventh) day following the date of such posting; or
  - 3.4.4. if delivered by hand to a physical address, on the date of delivery.
- 3.5. If the PO is silent regarding whether VMC shall collect, or whether the Service Provider must deliver to the Delivery Point/s, then the Service Provider shall be responsible for delivering the relevant goods and/or Services to the relevant Delivery Point/s. In addition, the Service Provider shall be responsible for ensuring that the goods and/or Services are delivered to the correct Delivery Point/s.
- 3.6. If the Service Provider is to deliver the goods and/or Services at or to a Delivery Point/s, the Service Provider shall deliver the required quantities of goods and/or Services with the required Specifications to the relevant Delivery Point/s on the required date of

delivery. If VMC shall be responsible for collection, the Service Provider shall ensure the goods and/or Services in the required quantities with the required Specifications are available for collection from the Service Provider's premises on the required date for collection. The Service Provider shall furnish VMC with a delivery note as well as a copy of the PO when making a delivery in terms of this provision. Timely delivery of a PO is of the utmost importance and, in the event that the goods and/or Services ordered in terms of a PO have not been delivered timeously, VMC reserves the right to cancel or amend such PO without incurring any liability to the Service Provider for damages or otherwise as a result of such cancellation or amendment but without prejudice to VMC's rights including the right to recover damages it has suffered.

3.7. In the event:

3.7.1. that the PO does not include a date for delivery or collection, the order is for delivery/collection within 24 (twenty-four) hours of receipt of the PO;

3.7.2. of any ambiguity or uncertainty in respect of a PO, such ambiguity or uncertainty must be referred to VMC immediately and a corrected/amended PO obtained prior to delivery. Incorrect delivery in terms of a PO containing an ambiguity or uncertainty shall be at the risk of the Service Provider as VMC shall make payment on its own interpretation of the ambiguous or unclear provision and/or may reject a delivery if it is not as required by VMC; and

3.7.3. that the Service Provider is not able to comply with a PO whether in respect of the quantity of the goods and/or Services, time of delivery/collection or otherwise, the Service Provider is required to notify VMC immediately and delivery should not be executed before a suitable amendment to the PO is made by VMC. VMC may in such circumstances withdraw, cancel, or amend the PO.

3.8. Delivery to a Delivery Point shall only take place during the Delivery Times applicable to such Delivery Point. The onus rests on the Service Provider to confirm the Delivery Times with the relevant Delivery Point prior to delivery and no deliveries to a Delivery Point will be accepted outside of the Delivery Times of such Delivery Point unless a prior arrangement has been made with the relevant VMC representative at the Delivery Point/s. In no circumstances whatsoever shall the Service Provider have any claim in respect of damages and/or losses arising directly or indirectly from rejection by VMC of a delivery outside of the applicable Delivery Time/s.

3.9. The goods and/or Services must be supplied strictly in accordance with the PO.

3.10. No goods and/or Services more than those stated in a PO may be delivered and, if additional goods and/or Services are delivered, VMC shall not pay for such additional goods and/or Services.

3.11. Without limiting the other provisions of these Standard Terms and Conditions, VMC shall be entitled to:

3.11.1. cancel a PO prior to delivery and/or prior to completion of delivery in terms of such PO (whichever is applicable) if the Service Provider commits an act of insolvency. An act of insolvency shall refer to any of the following:

- 3.11.1.1. an application for the provisional or final sequestration and/or liquidation of the Service Provider;
- 3.11.1.2. an application for a statutory compromise or a scheme of arrangement to be binding on all of the Service Provider's creditors;
- 3.11.1.3. the passing of a resolution by the Service Provider to place itself under business rescue or the filing of an application to court either by the Service Provider or a third party for an order to place the Service Provider under business rescue. In the event that the Service Provider is placed under business rescue, these Standard Terms and Conditions shall be deemed to have terminated on the day immediately prior to the commencement of the supervision;
- 3.11.2. cancel a PO prior to completion of delivery in terms thereof in the event that the Service Provider or any of its employees breach any of the Minersa Group's codes and policies including those relating to safety and security;
- 3.11.3. cancel a PO if it comes to VMC's attention that the Service Provider has provided incorrect or false information on its application to be registered as a Service Provider or the Service Provider fails to update its vendor application information with VMC after having received a request for such an update, prior to delivery in terms of such PO(s); and
- 3.11.4. reject delivery if the goods and/or Services supplied do not comply with the PO.
- 3.12. Unless other arrangements have been made in writing prior to delivery, the Service Provider shall at its own cost provide all labour, equipment, or facilities necessary for:
  - 3.12.1. off-loading of the goods and/or Services at the Delivery Point;
  - 3.12.2. loading goods and/or Services at the Service Provider's premises (as applicable); and/or
  - 3.12.3. the provision of the goods and/or Services.

#### 4. **OFFERS AND ORDERS**

- 4.1. The Service Provider shall deliver its offer in accordance with the provisions of the corresponding PO or tender documents submitted by VMC. VMC shall be entitled to reserve the right to accept or reject the offer submitted by the Service Provider without any right to compensation.
- 4.2. Unless otherwise stated, the offer(s) submitted by the Service Provider shall remain open for a period of ninety (90) Business Days from the date of receipt by VMC. VMC shall not assume any expenses derived from or related to the submission of the offer by the Service Provider.
- 4.3. The offers accepted by VMC shall be executed in accordance with the corresponding PO submitted by VMC to the Service Provider.
- 4.4. The commercial relationship between VMC and the Service Provider shall be governed

by the following contractual documentation, in descending order of priority:

- 4.4.1. the accepted PO;
  - 4.4.2. standard or technical specifications associated with the PO, if applicable;
  - 4.4.3. the quality plan associated with the Services, if applicable;
  - 4.4.4. individual terms and conditions which may be negotiated by the Parties, if applicable, provided that such individual terms and conditions shall not be contrary to the general terms and conditions outlined herein which apply to all Pos issued by VMC; and
  - 4.4.5. the Service Provider's offer, (collectively, **"the Contractual Documentation"**).
- 4.5. The performance of any Service shall include the correction of the defect, collection of remains of materials and tools in the work area, which shall remain in good order, the Service Provider being responsible for any incident, including accidents, that may be caused because of the breach of this provision.
- 4.6. If the Service Provider fails to comply with the performance schedule, VMC shall have the right to automatically apply a liquidated damage of 1% of the price mentioned in the PO when the delay exceeds, either continuously or intermittently in time, 1 to 15 days, an additional 2% from the 16<sup>th</sup> to the 30<sup>th</sup>, an additional 3% from the 31<sup>st</sup> to the 45<sup>th</sup> and an additional 4% from the 46<sup>th</sup>, up to a maximum of 10.00%, without prejudice to VMC's right to terminate the PO and claim any further or additional damages caused by late performance of the Service Provider's obligations to terminate, such as the cost of acquiring the services of third parties to comply with the PO.

## 5. **DUTIES OF THE SERVICE PROVIDER**

- 5.1. The Service Provider shall have the following duties in terms of these Standard Terms and Conditions:
- 5.1.1. obtaining and maintaining all necessary insurance required by any Applicable Laws, the provisions of these Standard Terms and Conditions or any instructions received from VMC;
  - 5.1.2. ensure that the Service Provider's employees use protective clothing and equipment as required by VMC and the Mine Health and Safety Act, 1996 (**"MHSA"**);
  - 5.1.3. ensure that it and its employees observe VMC's security rules at all times and that its employees shall not enter into any area(s) of VMC's premises which are not directly associated with the provision of the Services;
  - 5.1.4. ensure that only competent personnel are employed in operations involving skills

affecting the quality of the Services. Should the competence of any member of the Service Provider's workforce be in doubt, VMC may order that the member be sent for additional training at the Service Provider's account and/or that member be replaced with a competent person to perform that work;

- 5.1.5. ensure that no hindrance, hazard, annoyance or inconvenience is inflicted on VMC, its employees or any other third parties during the rendering of the Services;
- 5.1.6. report immediately to VMC's health and safety representative anything which appears unsafe or unhealthy at the site on which the Services are rendered;
- 5.1.7. exercise the utmost good faith in all of its dealings with VMC and not do anything or allow anything to be done which does or is likely to prejudice VMC's goodwill;
- 5.1.8. provide and supply all labour and have adequate skills to run the operations safely and productively and provided all plant and equipment, vehicles, materials, consumables, facilities and/or services necessary to carry out the Services. The equipment utilised must be sufficient to undertake the Services. The number of equipment deployed should be adequate to achieve the target within the time frame specified in the PO;
- 5.1.9. ensuring compliance with all applicable laws including environmental laws, and health and safety laws and protocols during the rendering of the Services;
- 5.1.10. properly maintain all plant, machinery, equipment, vehicles and/or facilities of whatsoever nature necessary to render the Services and to immediately repair any damage thereto;
- 5.1.11. be responsible for the employment and adequate training of all its workers, employees, operators, and supervisors who are suitably qualified, skilled, and medically fit to undertaking all duties and responsibilities set out in the PO and in addition, be responsible for all aspects of the remuneration, safety, and accommodation of such personnel as well as all arrangements for transport thereof that may be required;
- 5.1.12. provide approved personal protective equipment of good quality and include protective equipment as per the job profile and florescent jacket to each personnel

which must be in use at all times while performing the Services on the relevant site;

5.1.13. reporting to VMC monthly regarding the progress being made in rendering the Services; and

5.1.14. complying with any directives or instructions given to the Service Provider by VMC.

## 6. **BREACH**

6.1. If a Party (the "**Defaulting Party**") commits any breach of these Standard Terms and Conditions or the stipulations of the PO and fails to remedy such breach within 10 (ten) Business Days (the "**Notice Period**") of written notice requiring the breach to be remedied, then the Party giving the notice (the "**Aggrieved Party**") will be entitled, at its option, to:

6.1.1. claim immediate specific performance by the Defaulting Party of the obligations which it has breached, with or without claiming damages; or

6.1.2. cancel the PO, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the date on which the notice is given.

6.2. The Aggrieved Party's remedies in terms of this condition 7 are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law.

## 7. **CANCELLATION OF THE PO**

7.1. VMC reserves the right to cancel the PO at any time, without incurring liability, upon 7 (seven) Business Days' written notice, in the event of:

7.1.1. a non-fulfilment by the Service Provider of labour, Tax, environmental obligations or prevention of occupational health and safety risks;

7.1.2. a failure by the Service Provider to adhere to its duties outlined in these Standard Terms and Conditions or the PO;

7.1.3. when serious inaccuracies occur in the information provided by the Service

Provider in relation to the PO, especially in relation to its ability to perform the Services to which the PO relates or the quality of the Services or materials necessary for the Services or any other aspect related to the Services are of poor quality; or

7.1.4. when the Service Provider seriously breaches the security conditions imposed for the performance of the Services or failure to comply with the quality requirements in the provision of the Services.

7.2. If the PO is cancelled for any of the reasons above, VMC reserves the right not to return any partially advanced delivery without prejudice to the fact that, by asserting its rights, it may take legal action against the Service Provider for damages.

7.3. Additionally, VMC may cancel the PO at any time, in whole or in part, upon 14 (fourteen) Business Days' written notice of its intention to do so. Upon receipt of this communication, the Service Provider shall stop all work related to the PO and the payment of the Services performed at the time the cancellation notice is received, shall be negotiated between the Service Provider and VMC, in fair conditions.

## **8. PRICES, INVOICING AND PAYMENT**

8.1. The price quoted in VMC's PO is fixed and shall not be subject to adjustments, variations or changes unless such adjustments, variations or changes are also reflected in the PO or VMC agrees thereto in writing prior to payment being made in terms of the applicable PO. If the PO reflects the incorrect price, the Service Provider must advise VMC accordingly and ensure that an amended PO reflecting the correct price is obtained prior to delivery. Payment shall be made as per the price reflected on the PO.

8.2. The Service Provider shall issue the invoice for the Services provided in accordance with all Applicable Laws and, where appropriate, with VMC's instructions indicating the PO number and date, and if applicable, the corresponding contractual milestones susceptible to partial invoicing.

8.3. Payments shall be made by bank payment, within the payment period contemplated in the corresponding PO.

8.4. The price of the Services shall be paid once VMC's approval has been issued by signing the delivery note of the Services correctly provided.



- 8.5. If the Service Provider fails to comply with any of its obligations contained herein, VMC may offset, defer and/or withhold any payments due to the Service Provider. Payment of an invoice shall not constitute VMC's waiver of any of its rights.

**9. MEDIATION AND ARBITRATION**

- 9.1. The Parties agree that if a dispute arises among them in relation to the PO or these Standard Terms and Conditions, the Parties shall endeavor, in good faith, to first resolve the dispute by mediation. Either Party may institute a mediation session by giving the counter-party 7 (seven) Business Days' written notice of its intention to do so.
- 9.2. If the Parties are unable to resolve their dispute within 14 (fourteen) Business Days of the matter being referred for mediation, the Parties shall have the right to refer the dispute for arbitration, in accordance with the provisions of this clause.
- 9.3. Save in respect of those provisions of these Standard Terms and Conditions which provide for their own remedies which would be incompatible with arbitration, a dispute which arises regarding:
- 9.3.1. the interpretation of; or
  - 9.3.2. the carrying into effect of; or
  - 9.3.3. any of the Parties' rights and obligations arising from; or
  - 9.3.4. the termination or purported termination of or arising from the termination of; or
  - 9.3.5. the rectification or proposed rectification of these Standard Terms and Conditions,
- or out of or pursuant to these Standard Terms and Conditions or the PO (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to, and decided by arbitration.
- 9.4. That arbitration shall be held:
- 9.4.1. with only the Parties and their legal representatives present thereat; and
  - 9.4.2. at Sandton, South Africa.
- 9.5. It is the intention that the arbitration shall, where possible, be held and concluded in 20 (twenty) Business Days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 9.6. Save as expressly provided in these Standard Terms and Conditions to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa.

- 9.7. There shall be 1 (one) arbitrator who shall, if the question in issue is:
- 9.7.1. primarily an accounting matter, an independent chartered accountant with not less than 10 (ten) years' experience as a chartered accountant;
  - 9.7.2. primarily a legal matter, a practising senior counsel or, alternatively, a practising attorney with not less than 15 (fifteen) years' experience as an attorney; or
  - 9.7.3. any other matter, a suitably qualified person.
- 9.8. The nomination of the arbitrator shall be agreed upon between the Parties in writing or, failing agreement by the Parties within 5 (five) Business Days after the arbitration has been demanded, at the request of either of the Parties shall be nominated by the Chairman for the time being of Arbitration Foundation of Southern Africa (or its successor-in-title) who, in making his nomination, shall have regard to the nature of the dispute. Upon the aforesaid nomination, the Parties shall forthwith appoint such person as the arbitrator. If the aforesaid Chairperson fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 9.9. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 9.10. The arbitrator shall be obliged to give his award in writing fully supported by reasons. His award shall be final and binding on the Parties to the dispute.
- 9.11. The award of the single arbitrator shall be subject to appeal of a panel of 3 arbitrators which may be jointly appointed by the Parties.
- 9.12. The provisions of this condition are severable from the rest of these Standard Terms and Conditions and shall remain in effect even if the commercial relationship of the Parties is terminated for any reason.
- 9.13. Nothing contained in these Standard Terms and Conditions shall preclude any Party from obtaining relief on an urgent basis from a court of competent jurisdiction.
- 9.14. The relationship between the Parties shall be governed by South African law.

10. **CONSENT TO JURISDICTION**

- 10.1.1. The Service Provider consents to the non-exclusive jurisdiction of the South African High Court, Johannesburg South Africa (or any successor to that court), and waive any objection that such proceedings have been brought in an inconvenient forum for the purposes of any interdict or urgent action or proceeding in regard to any of your particular remedy caused by the undertaking or provision of Services to VMC.
- 10.2. Such consent to jurisdiction shall not prejudice the right of VMC from bringing proceedings against you in any other jurisdiction which VMC considers appropriate.

11. **CONTRACTOR**

- 11.1. The Parties agree that in providing the Services, the Service Provider shall act as an independent contractor, and its agents and employees, and any subcontractor's agents and employees, shall be recruited, directed and supervised by the Service Provider, and shall remain solely subject to the Service Provider's managing control and authority.
- 11.2. Nothing contained in these Standard Terms and Conditions shall be construed as creating a relationship of employer and employee, master and servant, appointer, and attorney, or principal and agent between VMC and the Service Provider.
- 11.3. The Service Provider shall provide the Services by means of its own personnel, duly appointed in accordance with the Applicable Laws, and having the training, experience and qualifications required for the proper performance of the Services.
- 11.4. The Service Provider may not subcontract, assign, or transfer, in whole or in part, the PO or any of the rights and obligations arising from it, without the prior written approval of VMC.
- 11.5. The Parties Agree that specialized technical assistance works that, in each case, are agreed between VMC and the Service Provider, either at the time the work is planned, or when eventually required, may be subcontracted by the Service Provider.
- 11.6. The Service Provider shall assume full responsibility for the Services that it has subcontracted to third parties and shall respond in any case to VMC for any circumstance arising from the performance of the subcontracted Services, or for any breach of the provisions of the Standard Terms and Conditions or any Applicable Laws.

12. **CONFIDENTIALITY**

- 12.1. Any information obtained by any Party in terms, or arising from the implementation, of these Terms and Conditions and the PO shall be treated as confidential by the Parties and shall not be used, divulged, or permitted to be divulged to any person not being a Party to this Agreement, without the prior written consent of the other Party save that:
  - 12.1.1. each Party shall be entitled to disclose such information to its employees, and to its directors, shareholders, professional advisors and funders, in each case who have a need to know for purposes of implementing the transactions contemplated

by this Agreement and who have been directed by the disclosing Party to keep such information confidential and have undertaken to keep such information confidential;

12.1.2. each Party shall be entitled to disclose any information which is required to be furnished by law or regulation or by any recognised stock exchange;

12.1.3. no Party shall be precluded from using or divulging such information in order to pursue any legal remedy available to it;

12.1.4. each Party shall be entitled to disclose such information if such information is or becomes generally available to the public other than by the negligence or default of such Party or by the breach of this Agreement by such Party;

12.1.5. each Party shall be entitled to disclose such information if the Party which disclosed same confirms in writing that it is disclosed on a non-confidential basis; and

12.1.6. each Party shall be entitled to disclose such information if such information has lawfully become known by or come into the possession of such Party on a non-confidential basis from a source other than the Party having the legal right to disclose same.

12.2. If a Party is required to disclose information as contemplated in condition 12.1, such Party will:

12.2.1. advise any Party/ies in respect of whom such information relates (the "**Relevant Party/ies**") in writing prior to disclosure, if possible;

12.2.2. take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;

12.2.3. afford the Relevant Party/ies a reasonable opportunity, if possible, to intervene in the proceedings;

12.2.4. comply with the Relevant Party/ies' reasonable requests as to the manner and terms of such disclosure; and

12.2.5. notify the Relevant Party/ies of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it was made.

12.3. The Parties shall use reasonable endeavours to procure that their respective directors,

employees, shareholders, professional advisors and funders observe a corresponding obligation of confidentiality to that set out in conditions 12.1 to 12.2 (both inclusive) in relation to the Parties themselves.

### 13. **LIMITATION OF LIABILITY**

- 13.1. Notwithstanding anything to the contrary contained in these Standard Terms and Conditions, VMC shall not be liable to the Service Provider under these Standard Terms and Conditions for any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, loss of a claim, business interruption or for any consequential, special or indirect losses that the Service Provider may suffer, save in the event that such loss arises as a consequence of VMC's wilful default, gross negligence or fraud.
- 13.2. To the extent that the Service Provider is entitled to recover any amount, in relation to any claim that the Service Provider may have against VMC, from any third party (including an insurer), then the Service Provider shall be obliged to take all commercially reasonable steps available to it to recover such amounts from such third party before proceeding against VMC. VMC agrees to offer the Service Provider such reasonable assistance as is required for the Service Provider to recover from the third party. The claim which the Service Provider has against VMC shall be reduced by the aggregate of any amount recovered by the Service Provider from a third party (including an insurer) in respect of such claim.
- 13.3. Nothing in these Standard Terms and Conditions shall affect the Service Provider's duty under the common law to take all reasonable steps to avoid or mitigate any Losses which it may suffer in consequence of a breach of any provisions of these Standard Terms and Conditions by VMC.
- 13.4. The Parties agree that VMC's aggregate liability (or the aggregate liability of any member of the Minersa Group) to the Service Provider under and in connection with these Standard Terms and Conditions, whether arising in contract (including under any indemnity), delict (including for negligence), statute or otherwise, shall not exceed the sum of the aggregate of all amounts already paid by VMC to the Service Provider for the preceding 3 (three) months under these Standard Terms and Conditions or the PO at the time that the Service Provider is entitled to claim from VMC.

### 14. **RISK**

- 14.1. Risk in respect of any goods shall pass to VMC as follows:

- 14.1.1. if the Service Provider is responsible for delivery of any goods to the Delivery Point/s, on completion of off-loading of such goods at the relevant Delivery Point/s;  
or

14.1.2. if VMC collects the goods from the Service Provider's premises, on departure of the transportation vehicle provided by VMC from the Service Provider's premises (as applicable).

14.2. Ownership in respect of the goods shall pass on payment of the tax invoice in respect of such goods. Notwithstanding that ownership shall only pass on payment, the Service Provider agrees that the goods may be utilised by VMC in the normal course of its business prior to payment and that the Service Provider shall have no claim whatsoever against VMC in this regard.

15. **OWN WORKPLACE TOOLS**

15.1. Unless otherwise agreed between the Parties, the Services shall be provided by the Service Provider using the Service Provider's own machinery and vehicles, spare parts, fuel etc.

15.2. The machinery used by the Service Provider during the provision of the Services must be properly insured and comply with the requirements of all Applicable Laws.

15.3. The Service Provider shall provide its personnel with the appropriate work garments and the auxiliary elements required in each case to carry out the Services. When it is necessary the Service Provider shall also make changing rooms with showers available to its employees.

16. **ENVIRONMENTAL RESPONSIBILITY**

16.1. The Service Provider shall, at its own cost, comply with all Applicable Laws, the provisions of the current environmental laws applicable to its activity/ies, or imposed by VMC (standards, procedures, or instructions of VMC) regarding the treatment and management of waste, industrial discharges, atmospheric emissions, noise, and prevention of soil contamination.

16.2. The Service Provider shall be responsible, where appropriate, for compliance with all and any regulations on the use and storage of chemical products in the work areas and shall assume responsibility for non-compliance with any environmental obligations.

17. **INSURANCE**

- 17.1. The Service Provider warrants that the Service Provider has and shall, for the duration of the performance of the Services, maintain adequate and appropriate third-party and public liability insurance having due regard to the Services to be performed by the Service Provider, the obligations assumed by the Service Provider in terms of these Standard Terms and Conditions and all-party risk insurance and shall also ensure that the equipment used to render the Services, whether such Services are performed by the Service Provider itself, any Sub-contractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, is insured for any losses to VMC, third party personal injury and/or third party property damage liability.
- 17.2. For the avoidance of doubt, the public liability insurance procured by the Service Provider must also cover all consequential losses of any nature that the Service Provider or VMC may suffer as a result of the Service Provider rendering the Services or otherwise executing any mandate or instruction from VMC contained in the PO. This includes, without limitation, sudden environmental contamination, explosions and machinery malfunction/breakdown.
- 17.3. The Service Provider shall, upon written request from VMC, provide signed, valid, and enforceable certificate(s) of insurance complying with the abovementioned conditions.
- 17.4. If the Service Provider fails to effect or maintain the aforementioned insurance, VMC may (in VMC's absolute discretion) effect and maintain such insurances and all costs and expenses incurred by VMC shall be recoverable from the Service Provider and shall be off-set against any amount owing by VMC to the Service Provider.

18. **CODE OF ETHICS**

- 18.1. The Service Provider voluntarily adheres to the provisions of Minersa Group's Code of Ethics, expressly stating that the Service Provider knows and accepts Minersa's code of ethics and assumes the commitment to ensure and comply with it, without prejudice to mandatory compliance with all Applicable Laws.

Non-adherence to Minersa's code of ethics shall lead to the cancellation of the PO

19. **INDEMNITIES**

- 19.1. The Service Provider hereby indemnifies and holds VMC harmless against:

- 19.1.1. all legal costs associated with obtaining any authorization(s) necessary for the Service Provider to effectively and efficiently render the Services to VMC;

19.1.2. all adverse environmental consequences that may arise from the Service Provider rendering the Services to VMC. This includes, but is not limited to, any contamination of land, any contamination of a water resource and any contravention of the provisions of any environmental or other consent(s) that the Service Provider or VMC may hold;

19.1.3. all losses and claims for injuries or damages to any person or property whatsoever (including surface or other damage to land, crops, structures or buildings) which may arise out of or in consequence of the negligent or willful act(s) or omission(s) of the Service Provider, its personnel, agent(s) or contractor(s) and in consequence rendering the Services to VMC and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;

19.1.4. any damages, losses or injuries to VMC's property that may be suffered by VMC as a result of the Service Provider performing the Services poorly or in an unsatisfactory manner;

19.1.5. any loss or damage suffered by VMC which may arise out of or in consequence of the contravention of any Applicable Law by the Service Provider;

19.1.6. the Service Provider will bear full responsibility for the implementation of health and safety protocols on the site on which the Services are being rendered and if a health and safety accident were to occur, the Service Provider hereby indemnifies VMC from all costs and liabilities associated therewith; and

19.1.7. the Service Provider hereby indemnifies VMC against all losses, damages and costs occasioned by the Service Provider failing to adhere to/uphold any of the warranties that it has provided to VMC.

## 20. **SPECIFIC WARRANTIES**

20.1. The Service Provider specifically warrants to VMC that:

20.1.1. the Service Provider has obtained all necessary consents, authorisations and/or licenses that are necessary for the Service Provider to render the Services to VMC effectively and efficiently and such consents, authorisations and/or licenses shall



remain valid throughout the period for which the Services are rendered to VMC;

20.1.2. the Service Provider will assume responsibility for all adverse environmental consequences occasioned by rendering the Services;

20.1.3. none of its key consents, authorisations or licenses which are necessary to render the Services are subject to any appeal or review proceedings launched against the Service Provider by any third-parties;

20.1.4. all personnel employed by the Service Provider are competent, qualified and capable to render the Services to VMC in a professional, efficient and workmanlike manner;

20.1.5. the Service Provider will implement robust health and safety protocols on the site at which it renders the Services. Should an adverse health and safety incident occur at the relevant site, the Service Provider shall assume full responsibility for such an event, unless the occurrence of such an event is directly attributable to VMC's actions;

20.1.6. the representative of the Service Provider has been duly authorised to represent the Service Provider in respect of all dealings with VMC (this includes the authority to bind the Service Provider to these Standard Terms and Conditions and/or any legal agreements);

20.1.7. VMC shall be provided with all records, reports, diagrams and plans which directly or indirectly relate to the Services, upon request, which request shall not be unreasonably made;

20.1.8. the Service Provider is not involved in any corrupt practices, it is not under any national or international sanctions and is not otherwise involved in any illegal transactions which could bring VMC's name into disrepute;

20.1.9. the Service Provider has obtained and maintains, at its own cost, any and all insurance that the Service Provider is required to have by law or by virtue of rendering the Services to VMC;

20.1.10. the Service Provider does not have any pending or ongoing litigation, arbitration, investigation, or administrative proceeding(s) launched against it which may threaten the Service Provider's ability to effectively and efficiently render the Services to VMC; and

20.1.11. the Service Provider is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to render the Services effectively and efficiently to VMC.

## **21. GENERAL WARRANTIES**

Each Party represents and warrants to the other Party that as at the Effective Date:

- 21.1. it has the necessary power and legal capacity to enter into and perform its obligations under the PO and these Standard Terms and Conditions and all matters contemplated herein, to sue and be sued in its own name, to carry on the business which it conducts and to own its assets;
- 21.2. it has taken all necessary corporate and/or internal action to authorise itself to be bound by these Standard Terms and Conditions;
- 21.3. the provisions of these Standard Terms and Conditions are and shall remain legally binding on it and the obligations imposed on it pursuant to these Standard Terms and Conditions and the PO constitute its legal, valid and binding obligations, enforceable in accordance with their terms; and
- 21.4. the execution of these Standard Terms and Conditions and performance of its obligations hereunder and in terms of the PO does not and shall not:
  - 21.4.1. contravene any law or regulation to which it is subject; or
  - 21.4.2. contravene any provision of its constitutional documents; or
  - 21.4.3. conflict with, or result in a breach of any of the terms of, or constitute a default under any agreement or other instrument to which it is a party, or any licence or other authorisation to which it is subject, or by which it or any of its property or revenues are bound, so as to prevent it from performing its obligations under these Standard Terms and Conditions and the PO.

## **22. NO AMENDMENTS AND VARIATIONS TO THE STANDARD TERMS AND CONDITIONS**

- 22.1. No extension of time, waiver, relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of these Standard Terms and Conditions, the PO or of any agreements, bill of exchange or other document issued pursuant to or in terms of these Standard Terms and Conditions shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver, relaxation or suspension).

- 22.2. Any extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 22.3. The Parties agree that email correspondence between them shall not give effect to any addition to, novation, amendment or consensual cancellation of these Standard Terms and Conditions.
- 22.4. No variation of these Standard Terms and Conditions shall operate nor to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with these Standard Terms and Conditions.
- 22.5. To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced a Party to bind itself to these Standard Terms and Conditions and/or whether it was negligent or not.
- 22.6. Except as expressly provided to the contrary in these Standard Terms and Conditions, no Party shall be entitled to cede, assign, transfer or delegate all or any of its rights, obligations and/or interest in, under or in terms of these Standard Terms and Conditions or the PO to any third party without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed).